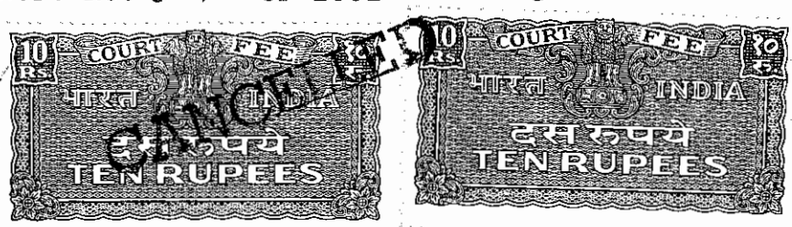
(3)

C.F. 100=00

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. NO. 891 OF 2001



IN THE MATTER OF:

PETITIONER

GURVINDER SINGH CHHADDA
Son of Shri Mahendra Singh
Chhadda, aged 38 years
Resident of Ravigram
Subhash Nagar, Raipur

P.R. No. 899/2001
Presented by Shri M. Raychelwar
dated 13.3.2001

VERSUS

RESPONDENTS : 1. State of Chhattisgarh through the Collector Raipur (C.G.)

2. The Commissioner Raipur Municipal Corporation, Raipur

3. The Nazul Officer, Collectorate Raipur

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR FOR ORDER(S) AND/OR DIRECTION (S) IN THE NATURE OF WRITS

TO,

HON'BLE MR. [illegible]

XI-HC-22

(63)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.No.891/2001

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
11-6-2001	Shri Kishore Bhaduri for the petitioner. Shri ~~Ravendra~~ Ravindra Shrivastava, learned Advocate General, for the respondents. Being surprised with the manner in which the proceedings were conducted by the Tehsildar(Nazul),Raipur in Revenue Case No.18/A-68/2000-01, I requested the Advocate General to look into the matter and justify the action of the Tehsildar. Advance copy of the petition alongwith the annexures was already supplied to the office of the learned Advocate General. From the proceedings,Annexure-P/10,it appears that on 7-5-2001 in the said revenue case after receiving some report the Addl.Tehsildar directed that the matter be registered in the register of A-68 and a notice be issued to the alleged encroacher Gurvinder Singh Chadda. The matter was adjourned to 25-5-2001. On 25-5-2001, it was reported that the notices remained unserved. The Tehsildar directed for issuance of the fresh notices and fixed the case for 30-5-2001. It also appears from the records that Tehsildar (Nazul) directed issuance of the notices but as the notices could not be served he ordered on 28-5-2001 that if the noticee is not available,then the same be served by affixture.	

पीछे देखिये

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The case was adjourned to 2-6-2001. On 2-6-2001, the petitioner through his counsel made a request for grant of time to file reply. The case was adjourned to 4-6-2001. On 4-6-2001, the petitioner through his counsel made an application for grant of some time but the learned Tehsildar(Nazul) rejected the application and as no reply was filed by the petitioner passed an order under Section 248(1) directing the petitioner to remove his possession from over survey no.64 ~~xxx~~ over which the petitioner had raised certain pakka constructions The application filed under Section 10 C.P.C. on the ground that the same ~~x~~matter was pending before the Addl.Tehsildar was not considered observing that the same was subject matter of Addl.Tehsildar's Court. On 4-6-2001, the Tehsildar(Nazul) passed the final order under Section 248 directing that the petitioner had made encroachment upon survey no.64 while he was granted a patta for survey no.50/1 and as he did not file any reply, he be evicted.The petitioner was given two days' time to remove encroachment. On 4-6-2001, as it appears from the proceedings that after the order was passed by the Tehsildar(Nazul), the petitioner submitted his reply. It appears that the petitioner ~~was~~ also made an application before the Tehsildar that he has filed some petition in the High Court which was ordered to be listed on 23-5-2001. It appears from the proceedings of this case that on 23-5-2001 the case was adjourned and was	

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(54)

आदेश पत्रक

W.P.No.891/2001

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

directed to be listed after Summer Vacation.

The submissions of the learned counsel for the petitioner are that the manner in which the proceedings have been polluted and contaminated by Tehsildar(Nazul) cannot be approved by any judicial authority because the Tehsildar(Nazul) did not give proper opportunity to the petitioner to submit his case. According to him, in a case like present when the facts were known to the Tehsildar, the matter was subjudice before the High Court, it was not necessary for the Tehsildar to proceed with the matter. According to him, only two days time was given to the petitioner to file the reply and the petitioner who was entitled to file the reply upto 5.00 p.m. was not granted propertime. It is also submitted that on 4-6-2001 in a hot haste the final order was passed and the said order has already been executed by demolishing the construction on 9-6-2001. The petitioner submits that he is still in possession of the land and as the proceedings have been conducted in most illegal, arbitrary and capricious manner, this Court must interfere.

Shri Shrivastava, learned Advocate General, submits that the order is ~~appealable~~ appealable,therefore, this Court must

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आदेश पत्रक (पुर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

not interfere. He however submits that looking to the urgency in the matter if a Tribunal has acted very swiftly the order cannot be condemned as bad.

I have heard the parties.

From the proceedings dated 2-6-2001 recorded by the Tehsildar(Nazul), it clearly appears that he granted only two days time to the petitioner to submit his reply. On 4-6-2001, Tehsildar(Nazul) closed the right of the petitioner to submit his reply and directed his eviction from the premises. From the order-sheet, it does not appear that he ever recorded any evidence of any authority, whether revenue or of Nazul, to verify whether the petitioner in fact has made any encroachment on survey no.64. From the tenor and texture of the final order dated 4-6-2001, it appears that said Tehsildar had received some information from Patwari Halka No.113 that the petitioner had made encroachment on survey no.64.

In the opinion of this Court, the manner in which the proceedings were conducted cannot be approved. A proper opportunity to defend a sine qua non with the principle of natural justice, the urgency in any case could not violate principle of natural justice nor the said urgency could be allowed to sacrifice the person who was in settled possession of the property and had raised pakka construction.

As already observed, it does not appear from the final orders that barring the report of the Patwari, there

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(65)

आदेश पत्रक

मामला क्रमांक W.P.No.891/2001 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was any other material on the record to show that the petitioner had made some encroachment on survey no.64 and was not confining himself to survey no.50/1 which was allotted to him under some lease deed.

Ordinarily, this Court under Article 226 does not interfere when the petitioner has alternative remedies available to him, but when the proceeding leading to the order and the process adopted by the authority shocks the conscience of the Court, then the alternative remedy would not be a bar to exercise of the jurisdiction under Article 226 of the Constitution of India.

Taking into consideration the manner in which the Tehsildar(Nazul) had exercised his power, I am of the considered opinion that the proceedings conducted by him,so also the final order passed by him, deserve to be quashed. The same are accordingly quashed.

The petitioner shall appear before the said Tehsildar (Nazul) on 18-6-2001,and shall submit his reply. The Tehsildar would be obliged to provide each and every document to the petitioner enabling him to understand as to what are the allegations and on what basis the Tehsildar and Patwari are alleging that the petitioner had made certain encroachment. If the Department feels that they are required to prove their

[पीछे देखिये

आदेश पत्रक (पुर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	allegations by leading oral or documentary evidence, then the Department may do so but in any case the petitioner would be given proper opportunity to lead evidence in support of his case. The Tehsildar shall be obliged to complete the proceedings after giving proper opportunity to the petitioner within a period of three weeks from the date of the appearance of the petitioner. The parties shall maintain the status-quo in relation to possession as it obtains today until final disposal of the proceedings pending before the Tehsildar(Nazul). The petition is allowed. C.c. to both the parties. **Sd/-** **R.S. Garg** **Judge**	

H/-